

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Commission Review of Mass Market Local Circuit Switching in  
Response to the Federal Communication Commission's Triennial  
Review Order Relative to Network Unbundling Obligations 05-TI-908

Commission Review of Local Transport and Enterprise Loop  
Issues in Response to the Federal Communications  
Commission's Triennial Review Order Relative to Network  
Unbundling Obligations 05-TI-909

Commission Review of Batch Hot Cut Process Issues in  
Response to the Federal Communications Commission's  
Triennial Review Order Relative to Network Unbundling  
Obligations 05-TI-910

**Standing Protective Order**

This Order is a protective order. Its terms shall apply to all Confidential Information that is provided in response to or in compliance with any Staff, Commission, or party questionnaires, requests for information or admissions, depositions, data requests or other discovery-related requests in any of the above-captioned proceedings (hereinafter the "Proceeding" or "Proceedings").

1. **Confidential Information**

For purposes of this Order only, "Confidential Information" consists of all information<sup>1</sup> that is marked "Confidential" or "Highly Sensitive Confidential Information" and that is provided by any person in response to or in compliance with any Staff, Commission, or party questionnaires, requests for information or admissions, depositions, or other discovery-related

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<sup>1</sup> For purposes of this Order, "information" means documents, data, information, studies, cost study information, models, diagrams, flowcharts, and other materials, and includes but is not limited to oral or other tangible or intangible form such as ideas, concepts, and know-how

requests in a Proceeding. A person shall not mark information as “Confidential” or as “HIGHLY SENSITIVE CONFIDENTIAL INFORMATION” unless the person believes in good faith that the material so marked would be entitled to legal protection from disclosure, including but not limited to protection under Wis. Stat. § 134.90, 196.14.

2. Use of Confidential Information

This Order imposes measures necessary to protect Confidential Information.

Unless specifically limited, all of the provisions of this Order apply to all Confidential Information, including HIGHLY SENSITIVE CONFIDENTIAL INFORMATION.

(a) Except as provided in paragraph 2 of this Order, and subject to the requirements of paragraphs 3 and 4 of this Order, Confidential Information may be made available only to the following persons:

- (1) the counsel of record of a party in the Proceeding (a “Party”) and any attorneys and legal assistants employed by or associated with the counsel of record of a Party who are acting at the direction of such counsel of record;
- (2) regulatory personnel employed by a Party who are acting at the direction of that Party’s counsel of record;
- (3) outside consultants retained by a Party and who are under the direction of either counsel or regulatory personnel identified in paragraph 2(a)(2);
- (4) persons requested by counsel of record of a Party to prepare testimony, affidavits, exhibits or other materials for submission to the Commission on behalf of the Party.

(b) Confidential Information made available pursuant to this Order shall be used only by the persons listed in paragraph 2(a), provided that such persons are not Restricted Persons. For purposes of this Order, “Restricted Persons” are persons engaged in any of the

following activities on behalf of a Party: strategic or competitive decision-making for planning; marketing; selling telecommunications services or other offerings; strategic or business planning; network planning or procurement. Parties may seek written authorization from the person producing the Confidential Information for Restricted Person(s) to review the Confidential Information. If the person producing the Confidential Information refuses to authorize such review or fails to respond in a timely manner to a request for such authorization, the requesting Party may, for good cause shown, request a ruling or an order from the Administrative Law Judge allowing the Restricted Person(s) to have access to the Confidential Information. The person producing the Confidential Information shall be given the opportunity to respond (either in writing or orally in a hearing before the Administrative Law Judge, at the Administrative Law Judge's discretion) to the request for access before any ruling or order granting such access is issued by the Administrative Law Judge.

(c) Subject to all of the other requirements and limitations of this Order, a Party having fewer than four employees with relevant expertise other than counsel who are qualified under paragraph 2 to review Confidential Information may designate three employees who shall review such Confidential Information solely for purposes of such Party's participation in the Proceeding. The receiving Party shall inform the person producing the Confidential Information of the names, job titles and job descriptions of the three designated employees, which may include Restricted Persons. If a person producing Confidential Information objects to any of the party's three designated employees receiving any particular Confidential Information, the person shall expeditiously bring an appropriate motion before the Administrative Law Judge for resolution of the matter.

(d) Confidential Information may be reviewed, used or disclosed only by or to the persons authorized under this Order and only in accordance with the terms specified herein.

The use, review or disclosure of Confidential Information is limited to the following purposes:

- (1) for use in connection with the Proceedings or any administrative or judicial appeals thereof;
- (2) for use in proceedings similar to the Proceedings that are conducted by other state public utility commissions or the Federal Communications Commission regarding matters in connection with or arising from the Federal Communications Commission *Triennial Review Order—In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* CC Docket No. 01-338, *Report and Order on Remand* (rel. August 21, 2003), provided that prior to use or disclosure of the Confidential Information in such similar proceedings, such other state public utility commission(s) or the Federal Communications Commission has in effect a protective order, or has approved a nondisclosure agreement, that provides substantially similar protections for the Confidential Information.

(e) Notwithstanding the limitations of paragraphs 2(a)-(d) above and paragraph 2(f) below, handling of the Confidential Information by clerical personnel for clerical purposes at the direction of persons authorized to review Confidential information shall not be deemed a violation of this Order.

(f) No person qualified under paragraph 2 of this Order to review Confidential Information may review such information unless the person has completed and signed the acknowledgement attached hereto as EXHIBIT A and, at least 24 hours prior to the person's review, has e-mailed an electronic copy of the signed acknowledgment to the Party or person producing the Confidential Information. If a Party is unable to provide the acknowledgment by e-mail or it is impracticable to provide the acknowledgment at least 24 hours prior to the time of a person's review, a Party may convey the acknowledgment by other means or may convey it within 24 hours of review so long as the person producing the

Confidential Information is notified of who will review the Confidential Information prior to the review. Acknowledgments should also promptly be filed electronically at the Commission in the Proceeding. Persons who wish to view the acknowledgments filed in a Proceeding may do so using the Commission's Electronic Document Repository at [http://psc.wi.gov/a\\_erf\\_search/default.aspx](http://psc.wi.gov/a_erf_search/default.aspx).

3. Highly Sensitive Confidential Information.

This paragraph provides additional requirements for HIGHLY SENSITIVE CONFIDENTIAL INFORMATION.

(a) Certain highly sensitive Confidential Information may, in good faith, be designated by the person filing the Confidential Information as "HIGHLY SENSITIVE CONFIDENTIAL INFORMATION." Material designated in good faith as HIGHLY SENSITIVE CONFIDENTIAL INFORMATION may be reviewed only by the following persons, so long as such persons are not Restricted Persons as defined in paragraph 2(b) above:

(i) a Party's counsel of record and any attorneys and legal assistants employed by or associated with the counsel of record of a Party who are acting at the direction of such counsel of record;

(ii) a Party's witness(es);

(iii) employees of a Party assisting a Party's witness(es) to prepare their testimony (not to exceed a reasonable number of necessary support persons for any one witness);

(iv) up to eight non-counsel employees in a Party's regulatory organization. Parties may seek written authorization from the person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION for additional non-counsel

regulatory employees to review the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION. If the person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION refuses to authorize such review or fails to respond in a timely manner to a request for such authorization, the requesting Party may, for good cause shown, request a ruling or an order from the Administrative Law Judge allowing the Restricted Person(s) to have access to the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION. The person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION shall be given the opportunity to respond (either in writing or orally in a hearing before the Administrative Law Judge, at the Administrative Law Judge's discretion) to the request for access before any ruling or order granting such access is issued by the Administrative Law Judge.

(v) independent consultants of a Party in a Proceeding who have a need to know and who are not engaged in any of the following activities: strategic or competitive decision-making for developing, planning, marketing, or selling telecommunications services or other offerings, strategic or business planning; competitive assessment; and/or network planning or procurement on behalf of the receiving Party.

(b) No person qualified under paragraph 2 of this Order to review HIGHLY SENSITIVE CONFIDENTIAL INFORMATION may review such information unless the person has completed and signed the acknowledgement attached hereto as EXHIBIT B and, at least 24 hours prior to the person's review, has e-mailed an electronic copy of the signed acknowledgment to the Party or person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION. If a Party is unable to provide the acknowledgment by e-mail or it is impracticable to provide the acknowledgment at least 24 hours prior to the time of a person's

review, a Party may convey the acknowledgment by other means or may convey it within 24 hours of review so long as the person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION is notified of who will review the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION prior to the review. Acknowledgments should also promptly be filed electronically at the Commission in the Proceeding. Persons who wish to view the acknowledgments filed in a Proceeding may do so using the Commission's Electronic Document Repository at [http://psc.wi.gov/a\\_erf\\_search/default.aspx](http://psc.wi.gov/a_erf_search/default.aspx).

(c) Subject to all of the other requirements and limitations of paragraph 3 of this Order, a Party having fewer than four employees with relevant expertise other than counsel and who are entitled to receive any particular HIGHLY SENSITIVE CONFIDENTIAL INFORMATION may designate three employees who shall review HIGHLY SENSITIVE CONFIDENTIAL INFORMATION solely for purposes of such Party's participation in the Proceeding. The receiving Party shall inform the person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION of the names, job titles and job descriptions of the three designated employees, which may include Restricted Persons, prior to providing them access to the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION. If the person producing the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION objects to any of the Party's three designated employees receiving any particular HIGHLY SENSITIVE CONFIDENTIAL INFORMATION, the person shall expeditiously bring an appropriate motion before the Administrative Law Judge for resolution of the matter.

(d) Notwithstanding the limitations of paragraphs 3(a)-(c), handling of the HIGHLY SENSITIVE CONFIDENTIAL INFORMATION by clerical personnel for clerical purposes at

the direction of persons authorized to review Confidential information shall not be deemed a violation of this Order.

4. Non- Party Confidential Information

During the course of the Proceedings, persons who are not parties (“non-Parties”) may be required to submit Confidential Information or other information to the Commission and to parties to the Proceedings pursuant to questionnaire, deposition, subpoena or otherwise. Such non-Party Confidential Information shall be subject to the same protections and requirements of this Order which relate to Parties, except where expressly provided otherwise.

5. Delivery of Documentation

(a) All Parties providing information in the Proceedings in response to or in compliance with any Staff, Commission, or party questionnaires, discovery requests, depositions, requests for admission, or other requests for information in a Proceeding (“Discovery Responses”), shall, by the date the Discovery Responses are due, electronically serve such Discovery Responses on each of the Parties listed on the official Commission service list for the Proceeding. This service requirement applies to all Discovery Responses including those containing Confidential Information, except that Confidential Information need not be served on a Party where the Party or its representative has not completed, signed, and filed an acknowledgment in the form attached hereto as Exhibit A (for Confidential Information) and, if applicable, Exhibit B (for HIGHLY SENSITIVE CONFIDENTIAL INFORMATION). That a Party has sought confidential handling for a portion or all of a Discovery Response(s) under Wis. Admin. Code § 2.12 does not relieve the person the service requirements of this paragraph.

(b) Confidential Information filed at the Commission by non-Parties in a Proceeding shall be subject to the protections and requirements of this Order. Within 24 hours of



a grant by the Administrative Law Judge, the Commission, or other competent authority of a confidentiality request under Wis. Admin. Code PSC § 2.12 to information filed by a non-Party, the appropriate Commission representative shall send an electronic copy of the confidential material to which the determination relates via electronic mail to counsel of record for SBC Wisconsin in the relevant Proceeding, provided that the counsel of record has completed, signed, and filed an acknowledgment in the form attached hereto as Exhibit A (for Confidential Information) and, if applicable, Exhibit B (for HIGHLY SENSITIVE CONFIDENTIAL INFORMATION). Within 24 hours of receiving confidential material sent by the appropriate Commission representative under this paragraph 5(b), SBC Wisconsin shall transmit an electronic copy of the material, via e-mail, to counsel of record for each Party in the relevant proceeding, provided that the counsel of record has completed, signed, and filed an acknowledgment in the form attached hereto as Exhibit A (for Confidential Information) and, if applicable, Exhibit B (for HIGHLY SENSITIVE CONFIDENTIAL INFORMATION).

(c) Service of Discovery Response(s) to counsel for a Party will constitute service on a Party.

6. Procedures

(a) Any Confidential Information that appears, is used, or is summarized in testimony, affidavits, transcripts, exhibits, briefs comments or other pleadings shall be filed under the confidential handling procedures of Wis. Admin. Code § PSC 2.12. Mere references to confidential information by control number or subject matter need not be filed under confidential procedures so long as no Confidential Information is contained in the submission.

(b) Hearing Room Procedure. Before a Party may use, repeat, or summarize Confidential Information in oral testimony, cross-examination or argument, it shall provide

sufficient notice to the Administrative Law Judge to allow the Administrative Law Judge an opportunity to take measures within his or her control to protect the confidentiality of the information at hearing.

7. Preservation of Confidentiality

No person who is afforded access to any Confidential Information by reason of this Order shall disclose the Confidential Information to anyone not specifically authorized to receive such information pursuant to the terms of this Order. Nor shall such persons use the Confidential Information in any manner inconsistent with this Order. All persons afforded access to Confidential Information pursuant to this Order shall keep the Confidential Information secure in accordance with the purposes and intent of this Order and shall adopt all reasonable precautions to assure continued confidentiality, including precautions against unauthorized copying, use or disclosure thereof.

8. Rights Under the Order

The Parties retain the right to challenge whether a document or information is in fact Confidential Information, including whether information is, in fact, proprietary information and whether such information can be withheld under paragraph 1 of this Order. The treatment of Confidential Information under this Order is not of precedential effect for other proceedings, and the Parties retain their rights to dispute such treatment in this or any other proceeding.

A Party that seeks or intends to disclose, on the public record, information taken directly from materials produced by another person, and that has been identified as Confidential Information by the producing person, must, before actually disclosing the information on the public record, first do one of the following: (a) contact counsel for the producing person and seek permission to place the information on the public record; (b) take affirmative steps to confirm

that the information is otherwise public information and falls within the exclusions contained in paragraph 10 of this Order; or (c) challenge the confidential nature of the Confidential Information and obtain a ruling that said information is not confidential or may be disclosed. In the event that a Party makes such a challenge and the Commission rules in the person's favor, the challenging Party shall provide the producing person with a reasonable opportunity to seek reconsideration by the PSCW and/or judicial review, and to abide by the terms of this Protective Order pending the ultimate disposition of the dispute by the Commission and/or the courts.

9. Reproduction and Retention of Documents

Subject to the specific limitations of this Order, Parties shall limit reproduction and dissemination of Confidential Information to that which is reasonably necessary to accomplish the extent of the uses and dissemination permitted by this Order. Within sixty (60) days of completion of these proceedings, including any administrative or judicial review, and upon request of the producing person, all documents containing Confidential Information provided under the terms of this Order shall be returned to the producing person, except that any notes or comments or materials prepared by counsel for the requesting Parties need not be returned. The obligation to return Confidential Information shall be satisfied by return of all the Confidential Information or submission of an affidavit that the Confidential Information has been destroyed, returned, or, following reasonable search, is lost and cannot be located. Counsel for the requesting Party or Parties shall have the right to retain copies of the pleadings, orders, transcripts, briefs, comments and exhibits in these proceedings.

10. Inapplicability

Subject to the provisions of paragraph 8 of this Order, this Order shall not apply to any Confidential Information if it:

(a) is or has become available to the public through no breach of this Order or other protective order issued by a court or agency of competent jurisdiction;

(b) was previously known by the Party without any obligation to hold it in confidence;

(c) is received from a third person free to disclose such information without restriction;

(d) is independently developed by the Party without the use of Confidential Information furnished to the Party;

(e) is approved for release by written authorization of the provider of the Confidential Information, but only to the extent of such authorization;

(f) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure, or is submitted to a regulatory commission, agency or court of competent jurisdiction under a protective agreement or order;

(g) is disclosed in response to a valid order of a court of competent jurisdiction or governmental body, but only to the extent and for the purposes of such order, and only if the recipient first notifies the producer of the Confidential Information to seek an appropriate protective order.

(h) is contained in the public files of any federal or state agency that is subject to public disclosure under relevant law

(i) is information that the Administrative Law Judge, the Commission or a court of competent jurisdiction determines is not entitled to confidential handling under Wis. Admin. Code § PSC 2.12.

11. Violation of Order

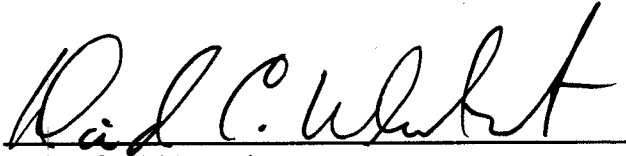
In the event any Party, person or entity subject to the terms of this Order fails to maintain the confidentiality of Confidential Information or otherwise violates the terms hereof, the Administrative Law Judge or Commission may take appropriate actions authorized under Wis. Admin. Code § PSC 2.24(2).

Should a Party, a Party's representative, or any other person or entity that has properly obtained access to Confidential Information under this Order violate any of its terms, it shall immediately convey that fact to the Commission and to the person producing the information. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating Party shall take all necessary steps to remedy the improper disclosure or use. The violating Party also shall immediately notify the Commission, the Administrative Law Judge, and the person producing the information, in writing, of the identity of each person known or reasonably suspected to have obtained the Confidential Information through any disclosure.

A Party, a Party representative or other person or entity that breaches this Protective Order remains subject to paragraph 11 of this Order regardless of whether or not the person producing the information could have discovered the violation earlier than when it actually was discovered. Paragraph 11 of this Order applies to inadvertent accidental violations, as well as intentional disclosures. Nothing in this Protective Order shall limit any other rights and remedies available to the person producing the information at law or equity against any Party using Confidential Information in a manner not authorized by this Protective Order, including the right to obtain injunctive relief to prevent or rectify violations of the Order.

Dated at Madison, Wisconsin, 19<sup>th</sup> day of November 2003

For the Commission:

A handwritten signature in cursive script, appearing to read "David C. Whitcomb", written over a horizontal line.

David C. Whitcomb  
Administrative Law Judge

**EXHIBIT A  
TO  
STANDING PROTECTIVE ORDER**

Public Service Commission of Wisconsin Docket Nos. 05-TI-908, 05-TI-909 & 05-TI-910

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**ACKNOWLEDGEMENT OF OBLIGATIONS REGARDING  
CONFIDENTIAL INFORMATION**

I have received and read the Standing Protective Order issued in the above-entitled proceedings .  
I agree to comply with and be bound by the requirements contained in the Standing Protective  
Order with respect to any Confidential Information made available to me pursuant to the  
Protective Order.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_

Job  
Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed on this \_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

**EXHIBIT B  
TO  
STANDING PROTECTIVE ORDER**

Public Service Commission of Wisconsin Docket Nos. 05-TI-908, 05-TI-909 & 05-TI-910

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**ACKNOWLEDGEMENT OF OBLIGATIONS REGARDING HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION**

I have read, understand, and acknowledge the Standing Protective Order issued in the above-entitled proceedings. I agree to maintain and dispose of any Highly Sensitive Confidential Information obtained pursuant to such order in accordance with the terms of the Standing Protective Order.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Job  
Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)